IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 77-27

JOSEPH WILLIAM LANDMESSER - - Petitioner

versus

UNITED STATES OF AMERICA - - Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

AUTHORITIES

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JOSEPH WILLIAM LANDMESSER - - *Petitioner*

v.

UNITED STATES OF AMERICA - - *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, JOSEPH WILLIAM LANDMESSER, respectfully prays that a Writ of Certiorari issue to review the Order and Opinion of the United States Court of Appeals for the Sixth Circuit, entered in this proceeding on April 18, 1977.

OPINIONS BELOW

The Order and Opinion of the Court of Appeals, entered on April 18, 1977 (Appendix A) is reported at ___ F. 2d ___. The Order of the Court of Appeals overruling Petitioner's Petition for Rehearing was entered on June 3, 1977 (Appendix B). The Judgment

and Commitment Order of the District Court for the Western District of Kentucky at Louisville (Appendix C), entered on March 4, 1976 is not reported.

JURISDICTION

The Order of the Court of Appeals for the Sixth Circuit (Appendix A) was entered on April 18, 1977; and a timely Petition for Rehearing was denied by Order of the Court of Appeals for the Sixth Circuit (Appendix B) on June 3, 1977. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the wiretap evidence should have been suppressed where it was obtained in violation of 18 U.S.C. §2518(1) which requires that each application for an order authorizing electronic surveillance shall include a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

2. Whether wiretap evidence should have been suppressed where the Government knowingly did not comply with the District Court's Order directing service of inventory on Petitioner, as required by 18 U.S.C. §2518(8)(d) to be served within ninety (90) days after the termination of the period of the wiretap authorization.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The charging statute in this criminal proceeding is 18 U.S.C. §1084(a), Transmission of wagering information; penalties, which provides as follows:

> (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

The following provision of Title 18 of the United States Code are applicable on this Petition:

> §2518. Procedure for wire or oral communications
>
> (1) Each application for an order authorizing or approving the interception of a wire or oral

communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

* * *

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(8)(d) Within a reasonable time but not later than ninety days after . . . the termination of the period of an order or extension thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of —

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted.

* * *

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the

contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted . . . .

* * *

§2515. Prohibition of use as evidence of intercepted communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

STATEMENT OF THE CASE

After waiving jury trial, Petitioner Landmesser was found guilty in the District Court of the use of a telephone in interstate commerce for the transmission of wagering information in violation of 18 U.S.C. §1084(a). The case was tried on a stipulation of facts.

All of the evidence against the Petitioner was obtained as a result of telephone wiretaps of another defendant's home. It is conceded that without the wiretap evidence, there would have been no case against the Petitioner.

Petitioner appealed to the Court of Appeals on the grounds that the wiretap evidence should have been

suppressed because the application for the order authorizing electronic surveillance did not contain a full and complete statement of the adequacy of other investigatory procedures, as required by 18 U.S.C. §2518 (1)(c); and because Petitioner did not receive inventory notice of the wiretap within the requisite time period as required by 18 U.S.C. §2518(8)(d). The Court of Appeals affirmed the District Court's failure to suppress. [Sixth Circuit Opinion, Appendix A.]

A more detailed account of what actually took place in this case is as follows:

On December 13, 1974, the United States Attorney for the Western District of Kentucky tendered an Application for electronic surveillance of one of the other defendants in this case pursuant to 18 U.S.C. §§2510-2520. [United States Attorney's Application, Appendix E.] This Application was supported by F.B.I. Special Agent John R. Morello's Affidavit. [Agent Morello's Affidavit, Appendix F.]

Agent Morello's Affidavit, submitted to the Court on December 13, 1974, included what purported to be a statement as to whether or not other investigative procedures had been tried and failed or why they reasonably appeared to be unlikely to succeed if tried or to be too dangerous. [Paragraph 21, Agent Morello's Affidavit, Appendix F, pp. 71-72.]

On the basis of the documents before it, the Court found probable cause (statutory compliance), and entered Orders authorizing electronic surveillance. During the course of electronic surveillance, conversations incriminating Petitioner and others were overheard.

The Court entered an Order directing service of inventory on March 12, 1975, ordering that Petitioner and others be served with a copy of the inventory by "certified or registered mail, return postage requested . . . ." The Government mailed a certified letter to Petitioner at the following address:

JOSEPH W. LANDMESSER
316 Maple Road
Garden City
Chester, PA. 19014

The letter was returned to the Government on March 18, 1975 marked,

"No such street."

Thereafter, the Government made no further attempt or effort whatsoever to serve Petitioner with a copy of the inventory, as required by 18 U.S.C. §2518(8)(d) and as ordered by the Court. The statutory period of ninety (90) days after the termination of the period of the wiretap authorization lapsed with required service not accomplished as to Petitioner.

The District Court denied Petitioner's motions to suppress, and the Petitioner was convicted. Petitioner appealed the conviction to the Court of Appeals for the Sixth Circuit, raising issues now presented by this Petition. The Opinion of the Court of Appeals affirmed Petitioner's conviction [Appendix A]. A timely Petition for Rehearing was denied by the Court of Appeals [Appendix B].

Petitioner's Motion for Stay of Mandate Pending Certiorari was granted by the Court of Appeals on June 15, 1977 [Appendix C].

REASONS FOR GRANTING THIS WRIT

1. The electronic surveillance evidence was obtained in violation of 18 U.S.C. §§2510ff. and should not have been used to convict Petitioner.

2. This Court now has the opportunity to clarify the important questions of statutory construction and application raised by this Petition.

3. The facts and the law of the present case require reversal.

A. *Introductory.*

The Fourth Amendment to the United States Constitution provides that,

> *The right of the people to be secure* in their persons, houses, papers, and effects, against unreasonable searches and seizures, *shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation,* and particularly describing the place to be searched, and the person or things to be seized [Emphasis added].

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 211-225, 18 U.S.C. §§2510-2520, which prescribes the procedure for securing judicial authority to intercept wire communications in the investigation of specified offenses, implements the Fourth Amendment with regard to electronic surveillance.

For purposes of this Petition, the relevant provisions of 18 U.S.C. §§2510-2520, implementing the Fourth Amendment, are set forth as follows:

§2518. Procedure for wire or oral communications.

(1) Each application for an order authorizing or approving the interception of a wire or oral communication . . . shall include the following information:

* * *

> (c) *a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;*
>
> * * *
>
> (8)(d) Within a reasonable time but not later than ninety days after . . . the termination of the period of an order or extensions thereof, the issuing or denying judge *shall cause to be served, on* the persons named in the order or the application, and *such other parties* to intercepted communications *as the judge may determine* in his discretion that is in the interest of justice, *an inventory which shall include notice of—*
>
> (1) the fact of the entry of the order or the application;
>
> (2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
>
> (3) the fact [illegible] during the period wire or oral communicati[illegible] were or were not intercepted [Emphasis added].
>
> * * *
>
> (10(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a

State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that–

(i) the communication was unlawfully intercepted . . . .

* * *

§2515. Prohibition of use as evidence of intercepted communications.

Whenever any wire or oral communications has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

Civil and criminal remedies are provided for violations of these statutory requirements implementing the Fourth Amendment. 18 U.S.C. §§2511, 2520.

In 1974, this Court stated that the clear intent of such detailed legislation was to limit electronic surveillance to surveillance conducted in strict accordance with statutory procedures and only in the specific circumstances enumerated by the statute.

> The purpose of the legislation, which was passed in 1968, was effectively to prohibit, on the pain of criminal and civil penalties, all interceptions of oral and wire communications, except those specifically provided for in the Act. . . .

> . . . Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. *United States* v. *Giordano,* 416 U. S. 505, 515 (1974).

Congress has provided a statutory basis for suppression of wiretap evidence. 18 U.S.C. §2515 *prohibits* the introduction of wiretap evidence or its fruits "if the disclosure of that information would be in violation of this chapter." Specific grounds for suppression spelled out in 18 U.S.C. §2518(10)(a) include whenever "(i) the communication was unlawfully intercepted. . . ." *United States* v. *Giordano, supra,* 416 U. S. at 524; *Gelbard* v. *United States,* 408 U. S. 41, 46 (1972).

This Court has broadly construed the legislative designation "unlawfully intercepted."

> The words "unlawfully intercepted" are themselves not limited to constitutional violations, and we think Congress intended to require suppression where there is failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device. *United States* v. *Giordano, supra,* 416 U. S. at 527.

This Petition demonstrates two instances in which wiretap evidence was "unlawfully intercepted" so that

the wiretap evidence should not have been used to convict Petitioner.

B. *The wiretap evidence should have been suppressed when it was obtained in violation of 18 U.S.C. §2518(1) which requires that each application for an order authorizing electronic surveillance shall include a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.*

Title III specifically requires, as central to the statutory scheme, that each application for electronic surveillance shall contain:

> a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous. 18 U.S.C. §2518(1)(c).

Title III further specifically requires, as central to the statutory scheme, that no order authorizing electronic surveillance may be entered without a prior judicial determination that

> normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. 18 U.S.C. §2518(3)(c).

This Court has specifically construed subsections (1)(c) and (3)(c) to mean what they say.

> Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, *the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.* §§2518(1)(e) and (3)(c). [Emphasis added.] *United States* v. *Giordano*, 416 U. S. 505, 515 (1974).

The various Circuit decisions have consistently held that the required statement regarding normal investigative procedures must be a statement *particularized to the case at hand.*

> [T]he affidavit, read in its entirety, must give a factual basis sufficient to show that ordinary investigative procedures have failed or will fail *in the particular case at hand.* [Emphasis added.] *United States* v. *Spagnuolo*, —— F. 2d ——, —— (9th Cir. March 4, 1977).
>
> * * *
>
> [The affidavit] discussed all of the normal techniques that had been tried and failed, and in respect of those untried, the affidavit gave reasons why they would not work *in this particular case.* [Emphasis added.] *United States* v. *Pezzino*, 535 F. 2d 483, 484 (9th Cir. 1976).

See especially the detailed particularity of the affidavit approved in *United States* v. *Cacace,* 529 F. 2d 1167 (5th Cir. 1976), and reproduced in note 1, at 1168.

The affidavit in the present proceeding DID NOT GIVE A FACTUAL BASIS SUFFICIENT TO SHOW THAT ORDINARY INVESTIGATIVE PROCEDURES HAVE FAILED OR WILL FAIL *IN THE PARTICULAR CASE AT HAND.*

In the present proceeding, the requirement of 18 U.S.C. §2518(1)(c) was not satisfied by the affidavit of Agent Morello as to normal investigative procedures. Agent Morello's affidavit (Appendix F) states, in pertinent part:

> Continuation of normal investigative procedures reasonably appears unlikely to succeed. [Agent Morello's Affidavit, Appendix F, p. 46.]
>
> [and]
>
> Interception of communications requested herein are necessary in order to identify the various co-conspirators and to learn the full scale illegal gambling business. Normal investigative techniques such as surveillances, reviews of telephone records and interviews have been tried without success and reasonably appear to be unlikely to succeed if further tried. Surveillances and interviews of potential witnesses have failed to provide evidence necessary to sustain convictions of PAUL ROBERT RHODES, KENNETH RAYMOND VOTTELER and others for violations of Title 18, Sections 371 and 1955, United States Code. The execution of search warrants on the persons and premises listed in the foregoing paragraphs would be unlikely to provide the evi-

> dence necessary to sustain successful prosecution under these statutes. My previous investigations have revealed that bookmakers normally maintain sketchy, if any, records and frequently code the information contained in their records and if they have the opportunity, they will destroy the records. Even if seized, the records would be unlikely to provide the specific evidence necessary to show the extent of the illegal gambling business and the full degree of participation in the business by PAUL ROBERT RHODES, KENNETH RAYMOND VOTTELER and others. Witnesses interviewed concerning the illegal gambling activities being conducted by PAUL ROBERT RHODES, KENNETH RAYMOND VOTTELER and others have failed to provide specific evidence of the violation because the witnesses are hesitant to discuss their knowledge of the gambling operation for fear of reprisal against them by RHODES, VOTTELER and others. Informants CS-1, CS-2, and CS-3 have refused to testify for fear of physical and financial reprisals against them by RHODES, VOTTELER and others.
>
> For the reasons set forth above, the only reasonable method of developing the necessary evidence of violations committed by the above named individuals and others, whose identities are unknown, is to intercept wire communications of PAUL ROBERT RHODES, KENNETH RAYMOND VOTTELER and others to and from the telephones described above. [Agent Morello's Affidavit, Appendix F, pp. 71-72.]

The content of Agent Morello's affidavit as to normal investigative procedures is: 1) not sufficiently partic-

ularized to the case at hand; and 2) mostly boilerplate or conclusory in approach.

Boilerplate statements as to normal investigative procedures in applications for electronic surveillance authority have been condemned.

> [B]oilerplate recitation of the difficulties of gathering usable evidence in bookmaking prosecutions is not a sufficient basis for granting a wiretap order. To hold otherwise would make §2518(1)(c) and (3)(c) mere formalities in bookmaking cases. *United States* v. *Kerrigan,* 514 F. 2d 35, 38 (9th Cir. 1975), cert. denied.

In the present proceeding, the statement as to normal investigative procedures specified only that surveillances and interviews had been conducted and that telephone records had been reviewed. The statement used typical boilerplate language to state that searches of persons and premises would not likely be fruitful because "bookmakers normally maintain sketchy, if any, records and . . . they will destroy the records." The statement further recited the familiar refrain that "witnesses are hesitant to discuss their knowledge" and informants "have refused to testify."

Agent Morello's affidavit does not inform the judge as to why other investigative methods—far less extensive and intrusive than eavesdropping—had not been utilized.

> Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices. *Berger* v. *New York,* 388 U. S. 41, 63 (1967).

Agent Morello's affidavit does not state that an investigation of other police records had been conducted or would be unsuccessful, or why. The affidavit does not refer to the results of previous wiretaps as other investigatory methods. The affidavit fails to show that search warrants had even been sought. Agent Morello's affidavit doesn't even consider another basic form of investigation in gambling cases—the use of questioning or interrogation under an immunity grant. Nor does the Agent postulate the use of infiltration by undercover agents to overcome the difficulties presented by reluctant witnesses and refusing informants.

Even where the affidavit states *conclusions as to surveillances, interviews, and reviews of telephone records,* the affidavit clearly does not specify as to the facts of those investigative procedures. The affidavit does not render "a full and complete statement" as to those investigative procedures.

Even where the affidavit states *conclusions as to search warrants* on the persons and premises involved, the affidavit does not specify as to those investigative procedures of search and seizure, except to narrate the Agent's forecast based on his "previous investigations." The affidavit does not render "a full and complete statement" as to the investigative procedures of search and seizure.

Even where the affidavit alleges *conclusions as to the difficulties involved in obtaining information and testimony from witnesses and informants,* the affidavit does not specify as to the actual difficulties involved, except to recite the usual refrain that the witnesses and

informants generally fear "reprisals." The affidavit does not render "a full and complete statement" as to investigations by witness and informant.

It is submitted that mere conclusions in an affidavit are insufficient to justify a search warrant.

> Mere conclusions by the affiant are insufficient to justify a search warrant, Aguilar v. Texas, 378 U. S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), or a wiretap order. More specifically, they do not provide facts from which a detached judge or magistrate can determine whether other alternative investigative procedures exist as a viable alternative. *United States* v. *Kalustian,* 529 F. 2d 585, 590 (9th Cir. 1976).

In the present proceeding, the statement *failed* to provide sufficient facts as to whether other investigative procedures existed as a viable alternative to the extraordinary devices of electronic surveillance. Agent Morello's statement is replete with general expressions such as:

> Interception of communications . . . are necessary. . . .
>
> Normal investigative techniques . . . reasonably appear to be unlikely to succeed. . . .
>
> The execution of search warrants . . . would be unlikely to provide the evidence necessary. . . .
>
> My previous investigations have revealed. . . .
>
> Even if seized, the records would be unlikely to provide the specific evidence necessary. . . .

> . . . the only reasonable method . . . is to intercept wire communications. . . .
>
> [Agent Morello's Affidavit, Appendix F, pp. 71-72.]

These expressions are the baldest sort of conclusions applicable to ANY POTENTIAL CASE, not specifically to "the particular case at hand," as required by the cases and the statute.

The expressions contained in the Ninth Circuit's review of the *Kalustian* statements mirror the expressions contained in Agent Morello's statement in the present proceeding.

The affidavits set forth facts from which probable cause to infer the operation of a gambling conspiracy could be gleaned. Nearly all of these "facts" trickled into the ears of FBI agents through the efforts of a series of professional gamblers and bookmakers. Unfortunately, as the affidavits attest, none of the underworld informants are willing to testify. The refusal of the informants to testify is a matter for the court to consider in authorizing electronic surveillance. However, standing alone, it may not be sufficient. Evidence of telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without that testimony.

Consequently, the investigating officials decided electronic surveillance was imperative. They discarded alternative means of further investigation because "knowledge and experience" in investigating other gambling cases convinced them that "normal investigative procedures" were unlikely

> to succeed. Agent Brent recites that searches are often fruitless because gamblers keep no records, destroy them, or maintain them in undecipherable codes. Use of the phone company's records alone is inconclusive. *Kalustian, supra,* 529 F. 2d at 589.

The language of the *Kalustian* affidavits mirrors the language of the statements at bar.

In *Kalustian,* the Ninth Circuit applied this Court's finding that electronic surveillance is "not to be routinely employed as the initial step in criminal investigation" [*United States* v. *Giordano, supra,* 416 U. S. at 515] to hold that the statements were insufficient as to normal investigative procedures.

> The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the Government's position is that all gambling conspiracies are tough to crack, so the Government need show only the probability that illegal gambling is afoot to justify electronic surveillance. Title III does not support that view. *Kalustian, supra,* 529 F. 2d at 589.

The affidavit at bar also failed to indicate why this case presented any investigative problems which were distinguishable from any other gambling case. The affidavit at bar did not provide "a full and complete statement" as to the exhaustion or dangerousness of other investigative procedures as explicitly required by 18 U.S.C. §2518(1)(c).

Because the affidavit in the present proceeding failed to provide the "full and complete statement" as to normal investigative procedures in the particular case at hand as required by 18 U.S.C. §2518(1)(c), it is respectfully submitted that the wiretap evidence below was "unlawfully intercepted" within the meaning of 18 U.S.C. §2518(10)(a)(i), so that the wiretap evidence should have been suppressed.

C. ***Wiretap evidence should have been suppressed where the Government knowingly did not comply with the District Court's Order directing service of inventory on Petitioner, as required by 18 U.S.C. §2518 (8)(d) to be served within ninety (90) days after the termination of the period of the wiretap authorization.***

In the present proceeding, the Government did not comply with the requirements of 18 U.S.C. §2518 (8)(d)(1)(2)(3), quoted above, by knowingly preventing compliance with the Court's Order and the statutory command to serve inventory notice on the Petitioner. Petitioner's name was included in the Inventory of the Court's Order Directing Service of Inventory, entered on March 12, 1976. However, Petitioner *never* received service of inventory notice. Apparently, the United States mailed a registered letter containing the inventory notice to:

> JOSEPH W. LANDMESSER
> 316 Maple Road
> Garden City
> Chester, PA. 19014

But this letter was returned by the post office marked, "No such street."

At the point when the letter returned marked, "No such street," the Government *knew* the inventory notice HAD NOT REACHED THE PETITIONER. The Government *knew* the statutory mandate *and* the Court's Order *had not been complied with.* Yet the Government did nothing.

By this omission to comply with statute and order, the Government knowingly prevented satisfaction of Petitioner's fundamental constitutional [Fourth Amendment], statutory [18 U.S.C. §2518(8)(d)], and judicial [Order of March 12, 1976] right to be informed that he had been the subject of electronic surveillance.

This Court has recently held, in *United States* v. *Donovan,* —— U. S. ——, 50 L. Ed. 2d 652 (January 18, 1977), that postintercept notice was not "intended to serve as an independent restraint on resort to the wiretap procedure." *Donovan, supra,* 50 L. Ed. 2d at 675.

> The fact that discretionary notice reached 39 rather than 41 identifiable persons does not in itself mean that the conversations were unlawfully intercepted. *Id.,* 50 L. Ed. 2d at 674.

Thus, an ordinary failure to serve inventory notice would not of itself be grounds for suppression. However, this Court in *Donovan,* explicitly noted that suppression might be an available remedy if the Government knowingly sought to prevent the service of inventory notice.

> Counsel for respondents Merlo and Lauer conceded at oral argument that the failure to name those respondents in the proposed inventory order was not intentional . . . and we are therefore not called upon to decide whether suppression would be an available remedy if the Government knowingly sought to prevent the District Court from serving inventory notice on particular parties. *Id.,* note 26, 50 L. Ed. 2d at 674.

See, United States v. *DiGirlomo,* 550 F. 2d 404, 407 (8th Cir. 1977). In the present proceeding, Petitioner cannot concede that the Government's failure to serve inventory notice on him was unintentional. The Government knew perfectly well that service had not been accomplished when the mailing returned marked, "No such street." The Government failed in its duty to then obtain a correct address and achieve service.

Petitioner now calls upon this Court, on the facts of this case, to decide that suppression is an available remedy where the Government *knowingly has prevented compliance* with the statute and order requiring service of inventory on Petitioner, the very issue left undecided by this Court in *Donovan.*

CONCLUSION

Because the application for an order authorizing electronic surveillance did not include a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous, in violation of 18 U.S.C. §2518(1), and because the Government knowingly prevented compliance with the District Court's Order directing serv-

ice of inventory on Petitioner and the statutory mandate of 18 U.S.C. §2518(8)(d) that service of inventory be made within ninety (90) days after the termination of the period of the wiretap authorization, the wiretap evidence against Petitioner should have been suppressed, so that Petitioner was unfairly convicted. It is therefore respectfully submitted that a Writ of Certiorari should issue in this case granting review of Petitioner's unfair conviction.

Respectfully submitted,

FRANK E. HADDAD, JR.
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Louisville, Kentucky 40202

Counsel for Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 76-1540

UNITED STATES OF AMERICA - - *Plaintiff-Appellee*

v.

JOSEPH WILLIAM LANDMESSER - - *Defendant-Appellant*

Appeal from the United States District Court for the Western District of Kentucky

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ORDER—Decided and Filed April 18, 1977

Before CELEBREZZE, McCREE and ENGEL, Circuit Judges.

ENGEL, Circuit Judge. After waiving jury trial, appellant Landmesser was found guilty in the district court of the use of a telephone in interstate commerce for the transmission of wagering information in violation of 18 U.S.C. §1084(a). The facts at the trial were largely stipulated, and the sole issue on Landmesser's appeal is whether the district court properly denied his motion to suppress intercepted wire communications.

Landmesser claims that the wiretap evidence should have been suppressed because the application for the order authorizing electronic surveillance did not contain a full and complete statement of the adequacy of other investiga-

tory procedures, as required by 18 U.S.C. §2518(1)(c); because the application was not made upon oath or affirmation as required by 18 U.S.C. §2518(1); and because appellant did not receive inventory notice of the wiretap within the requisite time period as required by 18 U.S.C. §2518 (8)(d). We affirm.

I. ADEQUACY OF OTHER INVESTIGATORY PROCEDURES

Section 2518(1)(c) requires the application for an order to contain

> . . . a full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous.

Appellant vigorously asserts that the government's compliance with this demand is to be measured by the adequacy of paragraph 21 of the affidavit of F.B.I. Special Agent John R. Morello, which contains the following representations:

> 21. Interception of communications requested herein are necessary in order to identify the various co-conspirators and to learn the full scale illegal gambling business. Normal investigative techniques such as surveillances, reviews of telephone records and interviews have been tried without success and reasonably appear to be unlikely to succeed if further tried. Surveillances and interviews of potential witnesses have failed to provide evidence necessary to sustain convictions of Paul Robert Rhodes, Kenneth Raymond Votteler and others for violations of Title 18, Sections 371 and 1955, United States Code. The execution of search warrants on the persons and premises listed in the foregoing paragraphs would be unlikely to provide

> the evidence necessary to sustain successful prosecution under these statutes. My previous investigations have revealed that bookmakers normally maintain sketchy, if any, records and frequently code the information contained in their records and if they have the opportunity, they will destroy the records. Even if seized, the records would be unlikely to provide the specific evidence necessary to show the extent of the illegal gambling business and the full degree of participation in the business by Paul Robert Rhodes, Kenneth Raymond Votteler and others. Witnesses interviewed concerning the illegal gambling activities being conducted by Paul Robert Rhodes, Kenneth Raymond Votteler and others have failed to provide specific evidence of the violation because the witnesses are hesitant to discuss their knowledge of the gambling operation for fear of reprisal against them by Rhodes, Votteler and others. Informants CS-1, CS-2 and CS-3 have refused to testify for fear of physical and financial reprisals against them by Rhodes, Votteler and others.
>
> For the reasons set forth above, the only reasonable method of developing the necessary evidence of violations committed by the above named individuals and others, whose identities are unknown, is to intercept wire communications of Paul Robert Rhodes, Kenneth Raymond Votteler and others to and from the telephones described above.

The foregoing paragraph, appellant urges, is wholly conclusory and consists only of boiler-plate generalizations. He places heavy reliance upon *United States* v. *Kalustian*, 529 F. 2d 585 (9th Cir. 1975). He complains that the affidavits in each case are of comparable vagueness and properly subject to the observation of the court in *Kalustian* that:

> The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the Government's position is that all gambling conspiracies are tough to crack, so the government need show only the probability that illegal gambling is afoot to justify electronic surveillance. Title III does not support that view. *United States* v. *Kalustian, supra,* at 589.

The language of §2518(1)(c) is "simply designed to assure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." *United States* v. *Kahn,* 415 U. S. 143, 153, n. 12 (1974). "These procedures were not to be routinely employed as the initial step in criminal investigation." *United States* v. *Giordano,* 416 U. S. 505, 515 (1974). At the same time the purpose "is not to foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted, but simply to inform the issuing judge of the difficulties involved in the use of conventional techniques." *United States* v. *Pacheco,* 489 F. 2d 554, 565 (5th Cir. 1974), *cert. denied,* 421 U. S. 909. Nor need a wiretap be used only as a last resort. *United States* v. *Kerrigan,* 514 F. 2d 35, 38 (9th Cir. 1975), *cert. denied,* 423 U. S. 924. Rather the Congress intended that the showing envisioned by §2518(1)(c) be tested "in a practical and common sense fashion." S. Rep. No. 1097, 1968 U. S. Cong. Code & Ad. News, p. 2190.

Two circuits have held that "considerable discretion" rests with the issuing judge in deciding whether other investigative methods might be successfully employed. *United States* v. *Smith,* 519 F. 2d 516, 518 (9th Cir. 1975); *United States* v. *Daley,* 535 F. 2d 434, 438 (8th Cir. 1976). The Third Circuit, in *United States* v. *Armocida,* 515 F. 2d 29, 38, (3rd Cir. 1975), observed without further discussion

that the only requirement is that there be a "factual predicate" in the affidavit. The Seventh Circuit in *United States* v. *Anderson,* 542 F. 2d 428, 431 (7th Cir. 1976), has held that the "government's burden of establishing compliance with [subsection 2518(1)(c)] is not great." Accord, *Armocida, supra.* In *United States* v. *Woods,* 544 F. 2d 242, 257 (6th Cir. 1976), we set out without discussion the pertinent portion of an affidavit and held its language sufficient.

In *United States* v. *Steinberg,* 525 F. 2d 1126 (2d Cir. 1975), the court was faced with language in an affidavit which would appear to be even more conclusory than that in *Kalustian.* While acknowledging that more information should have been included, the Second Circuit nevertheless recognized the difficulty in proving a negative, and observed "that wiretapping is particularly appropriate when the telephone is routinely relied on to conduct the criminal enterprise under investigation. *United States* v. *Steinberg, supra,* at 1130. To like effect, see *United States* v. *Bobo,* 477 F. 2d 974 (4th Cir. 1973), *cert. denied,* 421 U. S. 909. *United States* v. *Daley,* 535 F. 2d 434 (8th Cir. 1976); *In re Dunn,* 507 F. 2d 195 (1st Cir. 1974).

While the prior experience of investigative officers is indeed relevant in determining whether other investigative procedures are unlikely to succeed if tried, a purely conclusory affidavit unrelated to the instant case and not showing any factual relations to the circumstances at hand would be, in our view, an inadequate compliance with the statute. We agree with the Eighth Circuit that "the mere fact that the affidavit before us rested *in part* on statements that would be equally applicable to almost any gambling case does not render the affidavit insufficient." *United States* v. *Matya,* 541 F. 2d 741, 745 (1976), *cert. denied* 45 U.S.L.W. 3558 (emphasis in original). What is required in addition, however, is information about particular facts of the case at hand which would indicate that wiretaps are not being "routinely employed as the initial

step in criminal investigation." *Giordano, supra,* at 515. See also, *United States* v. *Vento,* 533 F. 2d 838, 850 n. 19 (3rd Cir. 1976).

Paragraph 21 of the Morello affidavit, taken by itself, runs perilously close to the generalized conclusions condemned in *Kalustian.* We do not believe, however, that we are required to read the paragraph in isolation from the remainder of the affidavit which was before the magistrate at the time the application was made. Paragraph 21 read in conjunction with the preceding twenty paragraphs of Morello's affidavit and the sworn application of United States Attorney Long provided the magistrate with a detailed outline of the activities which led to the application and thus furnished an ample factual background to support the more conclusory allegations in paragraph 21. We do not see why, in approaching the statutory requirement in a practical and common sense fashion, the magistrate should base his decision in this regard upon less than the entire application. So viewed, it is fully adequate, for the other allegations gave him the ample opportunity to understand just what witnesses were involved, which ones were confidential informers, what they knew and what they did not know, and what their relationship to the case and to the defendants was. From the very specific allegations, it was well within the province of the magistrate to conclude that the statutory requirement had been met.

II. REQUIREMENT OF OATH OR AFFIRMATION

Section 2518(1) provides that

> Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction . . .

The application for the wiretap here is signed and sworn to by a United States Attorney. Accompanying the application and specifically incorporated by reference therein is the affidavit of Special Agent Morello. Morello's affidavit specifically refers to and incorporates an "affidavit" by Special Agent Harold S. Harrison, Jr. for the apparent purpose of complying with the provisions of Section 2518 (1)(e) requiring a full statement about previous applications for the intercept of communications of the same person. Harrison's statement, however, while attached to the Morello and Long affidavits, is itself unsigned and unsworn. It is for this reason that appellant claims that the application itself is not upon oath or affirmation as required by the statute. We find this claim to be wholly without merit. The application itself was properly signed and sworn to by a properly authorized United States Attorney before a United States District Judge. Because that application specifically incorporates both the Morello and Harrison statements, it is in our view immaterial whether the latter were also made upon oath or affirmation. We see no difference between this method and the incorporation of the same facts as hearsay in the application itself. Harrison's status as a Special Agent for the F.B.I. confers sufficient indicia of reliability to warrant the inference that the hearsay evidence was credible.

III. SERVICE OF INVENTORY NOTICE

Finally, appellant claims that suppression of the wiretap evidence is required because of a purported violation of §2518(8)(d) which requires the service of an inventory notice within ninety days after termination of the period of the wiretap authorization order. Landmesser's name was included in the inventory furnished by the government to the court following completion of the wiretap. The district court ordered service of notice on March 12, 1975 to a number of people including Landmesser. This order is admittedly within ninety days of the termination of the intercept. However, an error in Landmesser's address re-

sulted in that notice not actually being received by him. On its own motion, an ex parte order was later entered by the district court and effectively served upon Landmesser approximately 75 days prior to the original day scheduled for trial. Because the latter order was issued more than 90 days after the termination of the wiretap, Landmesser claims that there was a fatal non-compliance with the statute.

Heavy reliance is placed by Landmesser upon the decision of this circuit in *United States* v. *Donovan,* 513 F. 2d 337, (6th Cir. 1975). There defendants Merlo and Lauer, although not named in the wiretap application but discovered and identified by the government during the course of interceptions, were omitted from the proposed order submitted to the district court. A majority of the court found that the failure to notify Merlo and Lauer was fatal to the admissibility of the evidence gained by the wiretaps. The Supreme Court reversed. *United States* v. *Donovan,* 45 U.S.L.W. 4115 (U. S. Jan. 18, 1977). While it recognized that a violation of the statute did occur in the government's failure to provide the district judge with a complete list of identifiable persons who had been subject to the wiretap and while the statutory requirement of notice was undoubtedly important, the Supreme Court found nothing in the legislative history suggesting that Congress intended the requirement to play "a central, or even functional, role in guarding against unwarranted use of wiretapping or electronic surveillance." *Donovan, supra,* at 4122, quoting *United States* v. *Chavez,* 416 U. S. at 578. Suppression of the evidence was therefore unwarranted.

There is nothing in the record here to suggest any bad faith by the government in the abortive attempt to serve notice on Landmesser at the improper address nor is there any showing of any actual prejudice. *See, Donovan, supra,* at 4121 n. 23, 4122 n. 26. Under such circumstances we need not determine whether a good faith mailing of the

notice to an incorrect address is even a violation of the statute. Even if we were to hold that the government's failure to serve Landmesser the inventory notice ordered by the district court was a violation of §2518(8)(d), this violation would not justify suppression of the intercepted communications any more than the violations considered in *Donovan* justified suppression of the evidence challenged in that case.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 76-1540

UNITED STATES OF AMERICA - - *Plaintiff-Appellee*

v.

JOSEPH WILLIAM LANDMESSER - - *Defendant-Appellant*

ORDER—Filed June 3, 1977

Before CELEBREZZE, MCCREE* and ENGEL, Circuit Judges.

Appellant having filed a petition for rehearing with this court, and this court having considered said petition and being duly advised in the premises,

IT IS ORDERED that the petition for rehearing be and it is hereby denied.

Entered by Order of the Court.
(s) John P. Hehman, Clerk

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*Honorable Wade H. McCree, Jr. resigned on March 28, 1977 and did not participate in this order.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 76-1540

UNITED STATES OF AMERICA - - *Plaintiff-Appellee*

v.

JOSEPH WILLIAM LANDMESSER - - *Defendant-Appellant*

On Appeal from the United States District Court for the Western District of Kentucky

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ORDER—STAY OF MANDATE PENDING CERTIORARI
—Filed June 15, 1977

THIS MATTER coming on to be heard upon Defendant-Appellant's Motion, pursuant to Federal Rules of Appellate Procedure 41(b) for a stay of the mandate herein, and the Court being advised,

IT IS ORDERED:

That no mandate of this Court issue herein for a period of thirty (30) days from this date, and that if within the period of 30 days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a Petition for Writ of Certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 33 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Entered by Order of the Court.
(s) John P. Hehman, Clerk

United States of America vs.

United States District Court for

DEFENDANT JOSEPH WILLIAM LANDMESSER

WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE

DOCKET NO. CR 75-0186 L

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (9/74)

COUNSEL

In the presence of the attorney for the government Mr. Stephen Pitt the defendant appeared in person on this date

MONTH	DAY	YEAR
March	1	1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Mr. Frank Haddad, Jr. (employed)
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of
[ ] NOT GUILTY. Defendant is discharged
[X] GUILTY. by the Court on submission on Stipulation of the Parties and the defendant having orally waived trial by JURY.

Defendant has been convicted as charged of the offense(s) of use telephone in interstate commerce for transmission of wagering information in violation of Title 18, U.S. Code, Section 1084(a) as charged in Count Two of the Indictment

Waiver of Preparation of Presentence Investigation and Report was executed by defendant and his counsel.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE YEAR AND ONE DAY as to Count Two of the Indictment.

IT IS FURTHER ORDERED that the defendant serve the first 15 days in a jail-type institution and believing it to be in the interest of the defendant and the United States, balance of imprisonment portion of sentence is hereby suspended and the defendant placed on probation for a period of TWENTY-SEVEN MONTHS. Probation shall begin upon release from custody.

IT IS FURTHER ORDERED that the defendant be committed for a fine of $1,000.00 as to Count Two of the Indictment.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the Appearance Bond previously executed herein be and it is hereby converted to a bond pending appeal of this action.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ENTERED
MAR 4 1976
AUGUST HECKENHOEFER, JR., Clerk
BY

SIGNED BY
[XX] U.S. District Judge
[ ] U.S. Magistrate

CHARLES M. ALLEN

Date March 1, 1976.

APPENDIX D

APPENDIX E

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. _____

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

APPLICATION—Filed December 13, 1974

George J. Long, Jr., a United States Attorney being duly sworn, states:

1. Affiant is an "investigative or law enforcement officer . . . of the United States" within the meaning of Section 2510(7) of Title 18, United States Code, that is . . . affiant is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Affiant has been authorized to make this application for an order authorizing the interception of wire communications by the Attorney General of the United States, the Honorable William B. Saxbe, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code. Attached to this application as Exhibit A are the letter of notification of approval from the United States Department of Justice Criminal Division, and a copy of the Attorney General's memorandum of authorization.

3. This application seeks authorization to intercept wire communications of Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, concerning offenses enumerated in Sections 1955 and 371 of Title 18, United States Code, that is . . . offenses involving the conducting, financing, managing, supervising, directing and owning of all or part of a gambling business in violation of Kentucky Revised Statutes, Chapter 436, Sections 436.200, 436.400, 436.450 and 436.490, and thereby in violation of Section 1955 of Title 18, United States Code, and the conspiracy to commit such offenses in violation of Section 371 of Title 18, United States Code, which violations are being committed by Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown.

4. Affiant has discussed all circumstances of the above offenses with Special Agent John R. Morello of the Louisville, Kentucky, Office of the Federal Bureau of Investigation, who has directed and conducted the investigation herein, and affiant has examined the affidavit of Special Agent Morello (attached to this application as Exhibit B and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, have committed and are committing offenses involving the conducting, financing, managing,

supervising, directing, and owning all or part of a gambling business in violation of Kentucky Revised Statutes, Chapter 436, Sections 436.200, 436.440, 436.450, and 436.490, and thereby in violation of Section 1955, Title 18, United States Code, and a conspiracy to commit such offenses in violation Section 371, of Title 18, United States Code.

(b) There is probable cause to believe that particular wire communications of Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular, these wire communications will concern the conducting of a large scale gambling operation utilizing wagering on sports contests and horse races, will concern the financing and operation of the illegal gambling business, the identity of the participants, the precise nature and scope of the illegal activity, and the relationships of the enterprise with other gambling activities. In addition, the communications are expected to constitute admissible evidence of the commission of the offenses.

(c) The attached affidavit contains a full and complete statement explaining why normal investigative procedure either have beer tried and have failed or reasonably appear unlikely to succeed if continued and reasonably appear unlikely to succeed if tried.

(d) There is probable cause to believe that telephone numbers 502-456-4731, listed in the name of Marie Toth, and 502-459-3372, listed in the name of Arthur Toth, located at 103 Breckinridge Square, Louisville, Kentucky, and telephone numbers 502-228-

3120, listed in the name of R. L. Foley, 502-228-3131, listed in the name of Honey Foley, and 502-228-8043, listed in the name of J. W. Jones, located at Lot 7, Oldham Acres, Prospect, Kentucky, have been used and are being used by Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, in connection with the commission of the above-described offenses.

5. The following is a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making this application, made to any judge for authorization to intercept, and for approval of interceptions, or wire or oral communications involving any of the same persons, facilities, or places specified in this application, and the action taken by the judge on each such application.

(a) On December 14, 1972, an order authorizing the interception of wire communications of individuals was signed by the Honorable John P. Fullam, United States District Court, Eastern District of Pennsylvania. As a result of this order authorizing the interception of wire communications, Paul Robert Rhodes was intercepted in conversation with the individuals named in the order.

(b) On October 31, 1974, United States District Judge Mac Swinford, Eastern District of Kentucky, Covington, Kentucky, issued on order authorizing the interception of wire communications of individuals, including Paul Robert Rhodes, Joseph Anthony Mark Albert, Fred Joseph Wehby, and Charles Burkhardt.

Wherefore, affiant believes that probable cause exists to believe that Joseph Anthony Mark Albert, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, have engaged in the commission of offenses involving the conducting, financing, managing, supervising, directing or owning of all or part of the gambling business in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit such offenses in violation of Section 371 of Title 18, United States Code; that Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, have used the telephone numbers 502-456-4731, listed in the name of Marie Toth, and 502-459-3372, listed in the name of Arthur Toth, located at 103 Breckinridge Square, Louisville, Kentucky, and telephone numbers 502-228-3120, listed in the name of R. L. Foley, 502-228-3131, listed in the name of Honey Foley, and 502-228-8043, listed in the name of J. W. Jones, located at Lot 7, Oldham Acres, Prospect, Kentucky, in connection with the above-described offenses; that communications of Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, concerning these offenses will be intercepted on the above-described telephones; and that normal investigative procedures appear unlikely to succeed.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent John R. Morello (attached hereto), affiant requests this court to issue an order pursuant to the power conferred on it by Section 2518, of Title 18, United States Code, authorizing

the Federal Bureau of Investigation of the United States Department of Justice to intercept wire communications on the above-described telephones until communications are intercepted which reveal the manner in which Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown, participate in the conducting, financing, managing, supervising, directing, and owning of all or part of an illegal gambling business, and which reveals the identities of their confederates, their methods of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that order, whichever is earlier.

It is further requested that this Court issue an order pursuant to Section 2518(4)(e) of Title 18, United States Code, directing that South Central Bell Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish this interception unobstrusively and with a minimum of interference with the services that such carrier is accorded the person whose communications are to be intercepted, the furnishing of such facilities and technical assistance by the South Central Bell Telephone Company to be compensated for by the applicant at the prevailing rates.

(s) George J. Long, Jr.
United States Attorney
Louisville, Kentucky

Subscribed and sworn to before me this 13th day of December, 1974.

(s) Charles M. Allen
United States District Judge
Western District of Kentucky

APPENDIX F

AFFIDAVIT—Filed December 13, 1974

John R. Morello, Special Agent, Federal Bureau of Investigation, Louisville, Kentucky, being duly sworn, states:

1. I am an "investigative or law enforcement officer . . . of the United States" within the meaning of Section 2510(7) of Title 18, United States Code—that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. This affidavit seeks authorization to intercept wire communications concerning offenses involving violations of Section 1955, Title 18, United States Code, and the conspiracy to commit the aforesaid offenses in violation of Title 18, United States Code, Section 371, which have been and are now being committed by Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown), and others as yet unknown.

3. I have personally conducted the investigation of these offenses. Because of my personal participation in this investigation and because of reports made to me by other Special Agents of the Federal Bureau of Investigation (FBI), I am familiar with all the circumstances of the offense. Based on this familiarity, I allege the facts contained in the paragraphs below to show that:

(a) There is probable cause for belief that Joseph Anthony Mark Albers, also known as "Legs" and "Hillbilly"; Fred Joseph Wehby, also known as "Fre[illegible]"; Charles Burkhardt, also known as "Charlie"; Paul Robert Rhodes; Carl (Last Name Unknown); Foch Louis Karem, Jr.; Kenneth Raymond Votteler, also known as "Kenny"; Jimmy (Last Name Unknown), and others as yet unknown,

have been and are now committing and will continue to commit offenses against the United States that is to say, conducting, financing, managing, supervising, directing, or owning all or part of an illegal gambling business, which has been or remains in substantially continuous operation for a period in excess of thirty (30) days or has a gross revenue of $2,000 in any single day in violation of Kentucky Revised Statutes, Chapter 436, Sections 436.200, 436.440, 436.450 and 436.490, (prohibiting the placing and the accepting of bets on sports contests, keeping a room for gambling, acting as an agent or an employee of another in keeping premises where bets are placed and betting or transmitting bets on horse races other than authorized Kentucky races) and therefore, in violation of Title 18, United States Code, Section 1955, and/or conspiring to commit the above offenses in violation of Title 18, United States Code, Section 371.

(b) There is probable cause for belief that wire communications concerning these offenses will be obtained through wire interceptions, authorization for which is applied for herein.

(c) Continuation of normal investigative procedures reasonably appears unlikely to succeed.

(d) There is probable cause to believe that the following telephone numbers are being used to carry out the offenses detailed above, all of which appear more fully hereinafter:

(1) Telephone number 502-456-4731 which is listed to be in service at 103 Breckinridge Square, Louisville, Kentucky, in the name of Marie Toth.

(2) Telephone number 502-459-3372 which is listed to be in service at the address 103 Breckinridge Square, Louisville, Kentucky, in the name of Arthur Toth.

(3) Telephone number 502-228-3120 which is listed to R. L. Foley, Lot 7, Oldham Acres, Pospect, Kentucky.

(4) Telephone number 502-228-3131 which is listed to be in service at Lot 7, Oldham Acres, Prospect, Kentucky, in the name of Honey Foley.

(5) Telephone number 502-228-8043, which is listed to be in service at the address Lot 7, Olhdam Acres, Prospect, Kentucky, in the name of J. W. Jones.

(e) Section 801 of Title 8 of the Organized Crime Control Act of 1970, Public Law 91-452, 91st Congress, October 15, 1970, contains special findings that illegal gambling involves the wide-spread use of and has an effect upon interstate commerce and the facilities thereof.

4. From my five years experience in the investigation of gambling offenses and from consultations with other Special Agents of the Louisville, Kentucky office of the Federal Bureau of Investigation, I know that a bookmaker hopes to achieve the ideal situation of having equal amounts of money wagered on each participating team in a sports event. In this way, the bookmaker cannot be the loser no matter what the outcome of the contest is for he keeps a small premium on each bet placed with him. The bookmaker then operates on a profit margin. He does not gamble on the outcome of the event.

(a) I further know that in order for a bookmaker to balance his books, it is almost always necessary for him to have another bookmaker to replace the bets which unbalances his books, so if those bets win, he will be covered by his bookmaker, i.e., insurer. This second bookmaker is known as a "lay-off bookmaker" and the process is known as "laying-off." This bookmaker's bookmaker must also balance his books, thus the process may be repeated many times over and involve people in various areas of the country.

(b) A bookmaker must also receive and furnish line information and quick horse race results. The line is the point spread or odds in an athletic contest or horse race.

The quick race results are necessary to stimulate betting activity and to enable him to operate his gambling operation with the greatest chance of profit.

(c) Line information usually initiates the first call of the day with each person. The bookmaker will receive a line from a handicapper who specializes in determining what the odds will be in an athletic contest or horse race. The bookmaker will then furnish the line to his customers who will study it, compare it with other lines and then make wagers. The quick horse race results are received throughout the day within a short period of time after a particular horse race is run. To do this, constant access to a telephone is a necessity.

(d) During previous investigation of illegal gambling activities, it has been determined that bookmakers frequently obtained telephone service at their handbooks in fictitious names to avoid detection by law enforcement agencies.

5. No previous applications are known to have been made to Judges of competent jurisdiction for authorization to intercept or for approval of interception of wire or oral communications involving any of the same persons, facilities, or places specified herein, except as noted hereinafter in Paragraph 19 and Paragraph 5 of affidavit of Special Agent Harold S. Harrison, Jr.

FACTS AND CIRCUMSTANCES

6. I am personally acquainted with a confidential informant hereinafter referred to as Confidential Source One (CS-1), who has furnished reliable information concerning gambling activities in the Louisville, Kentucky, area for the past six (6) months. Information furnished by CS-1 has been corroborated by separate, independent investigations conducted by Special Agents of the Federal Bureau of Investigation and CS-1 has never been known to provide false or misleading information.

CS-1 has gained information concerning illegal gambling activities through personal contacts with bookmakers in the Louisville, Kentucky, area. Information furnished by CS-1 has resulted in at least three (3) arrests on State gambling charges.

On June 28, 1974, CS-1 advised me that CS-1 had been placing wagers with Paul Rhodes and an individual subsequently identified as Nicholas Iacona on a substantially continuous basis for the past six (6) months at telephone numbers 502-636-3706 and 502-636-3707.

On August 28, 1974, CS-1 advised Special Agents Eugene N. Thomeczek and John R. Morello that CS-1 determined from persons that CS-1 knows places wagers with Rhodes, that Rhodes and Iacona were utilizing Louisville, Kentucky. telephone number 502-635-7461 to operate a gambling business.

7. On September 6, 1974, Special Agent Edwin H. Eilers, Federal Bureau of Investigation, Louisville, Kentucky, advised me that he is acquainted with a confidential source hereinafter referred to as Confidential Source Two (CS-2), who has furnished him on at least one hundred (100) occasions in the past ten (10) years, reliable information concerning gambling activities. Information furnished by this informant has been corroborated through separate investigations by Special Agent Eilers and other Agents of the Federal Bureau of Investigation and CS-2 has never been known to furnish false or misleading information. Information furnished by CS-2 has resulted in at least fourteen (14) gambling arrests.

CS-2 is and has been an inveterate gambler throughout entire life and has gained information concerning illegal gambling activities through personal contacts with bookmakers in the Louisville, Kentucky, area.

On September 6, 1974, Special Agent Edwin H. Eilers, supra, advised me that CS-2 had advised him on the same date that CS-2 learned from a Louisville, Kentucky, book-

maker that Paul Rhodes and an unknown individual are operating a handbook on South Preston Street, Louisville, Kentucky, utilizing telephone number 502-635-7461. The bookmaker further related to CS-2 that Rhodes was handling lay-off action amounting to one thousand dollars ($1,000) to five thousand dollars ($5,000) on a single sports wager and Rhodes was handling in excess of ten thousand dollars ($10,000) a day in illegal wagers.

8. On September 10, 1974, September 11, 1974, September 17, 1974, September 18, 1974, September 24, 1974, and September 26, 1974, CS-1 advised me that CS-1 continued to contact Paul Rhodes and Nick Iacona at Louisville, Kentucky, telephone number 502-635-7461 in order to obtain line information on college and professional football games and professional baseball games and thereafter used this information to place wagers on baseball and football games with Rhodes and Iacona.

On September 30, 1974, CS-1 advised me that CS-1 learned from Paul Rhodes that Nick Iacona had left the Louisville, Kentucky, area.

CS-1 advised me on the same date that on September 28, 1974, that CS-1 had contacted Paul Rhodes at telephone number 502-635-7461, and placed a wager on the Pittsburgh-University of Southern California football game. The bet was Pittsburgh +8½ points.

On October 16, 1974, CS-1 advised me that Paul Rhodes had moved his handbook operation to telephone number 502-459-3372. CS-1 stated that on October 15, 1974, CS-1 telephoned Rhodes at telephone number 502-459-3372 and placed wagers on horse races and World Series baseball game with Rhodes. CS-1 further advised me on October 16, 1974, that on October 16, 1974, CS-1 contacted Rhodes at telephone number 502-459-3372, and placed wagers on two professional football games and the World Series baseball game after receiving line information from Rhodes regarding the above mentioned sports contests.

On October 18, 1974, CS-1 advised me that Paul Rhodes continued to operate a handbook using telephone numbers 502-459-3372 and 502-456-4731. CS-1 stated that Rhodes accepted a wager from CS-1 on a World Series baseball game on October 17, 1974, over telephone 502-459-3372.

On October 29, 1974, CS-1 advised me that during the period of October 21-26, 1974, an unknown male was accepting wagers over telephone numbers 502-459-3372 and 502-456-4731. CS-1 stated that on October 28, 1974, CS-1 contacted Rhodes at telephone number 502-459-3372, and placed a wager on a professional football game played on the evening of October 28, 1974.

On November 15, 1974, CS-1 advised Special Agent Eugene N. Thomeczek, supra, and myself that Paul Rhodes continues to operate a handbook over telephone numbers 502-459-3372 and 502-456-4731 and Rhodes is assisted in this handbook by an individual known to CS-1 as Carl (Last Name Unknown). CS-1 advised that CS-1 had contacted Rhodes at telephone number 502-456-4731 on November 11, 1974, and placed a wager on the St. Louis Cardinals, who were playing the Minnesota Vikings in a professional football game on November 11, 1974. On November 13, 1974, CS-1 contacted Rhodes at telephone number 502-459-3372 and placed a wager on the Kentucky Colonels-New York Nets professional basketball game. On November 14, 1974, CS-1 contacted Carl (Last Name Unknown) at telephone number 502-459-3372 and placed a wager on the Florida Blazers-Southern California Sun professional football game with Carl (Last Name Unknown). During the time CS-1 was receiving line information from Carl (Last Name Unknown) and placing the wager with Carl (Last Name Unknown), CS-1 overheard Paul Rhodes talking in the background.

On November 18, 1974, CS-1 advised me that on November 17, 1974, CS-1 had contacted Carl (Last Name Unknown) at telephone number 502-456-4731 and placed

wagers on at least three (3) professional football games to be played on November 17, 1974. On November 18, 1974, CS-1 contacted Carl (Last Name Unknown) over telephone number 502-459-3372 and placed a wager on the Denver Broncos-Kansas City Chiefs professional football game to be played on November 18, 1974. After placing the wager with Carl (Last Name Unknown), CS-1 advised me that CS-1 talked to Paul Rhodes concerning an account balance.

On December 5, 1974, CS-1 advised me that he contacted Carl (Last Name Unknown) at telephone number 502-459-3372 and requested line information concerning a professional football game. Carl replied that the line would not be available until later that evening. CS-1 asked Carl if CS-1 could speak to Paul Rhodes and Carl replied that Rhodes was not in, but would return to his, Rhodes', apartment on December 6, 1974.

9. On November 19, 1974, I was advised by Special Agent Edwin H. Eilers, supra, that on November 18, 1974, CS-2 advised him that an individual CS-2 knows as a Louisville bookmaker told CS-2 that he was told by Paul Rhodes that he, Rhodes, continues to handle lay-off wagers on sports contests at telephone numbers 502-459-3372 and 502-456-4731.

10. On November 19, 1974, Special Agent Edwin H. Eilers, supra, advised me that he is acquainted with a confidential informant hereinafter referred to as Confidential Source Three (CS-3), who has furnished him on at least thirty (30) occasions in the past eight (8) years reliable information concerning gambling. Information furnished by this informant has been corroborated through separate investigations by Special Agent Eilers and other Agents of the Federal Bureau of Investigation and CS-3 has never been known to furnish false or misleading information. Information furnished by CS-3 has resulted in at least twenty two (22) gambling arrests.

On November 14, 1974, CS-3 advised Special Agent Eilers that CS-3 learned through contact with a Louisville bookmaker that the bookmaker lays off sports and horse race wagers through Paul Rhodes.

11. On July 26, 1974, I caused a check of the Law Information Network of Kentucky (LINK) which revealed that 1974 Kentucky license L87-917 is listed to Paul Rhodes, 2101 Sherwood Avenue, Louisville, Kentucky 40205, for use on a 1968 Volkswagen, two door, Vehicle Identification Number (VIN) 118534206.

On November 19, 1974, Bob Rauchfuss, Jefferson County Motor Vehicle License Bureau, advised me that 1974 Kentucky license M54-461 is listed to Paul Rhodes for use on a 1971 Pontiac Catalina, four door sedan, VIN 252691P-580171, at 2101 Sherwood Avenue, Louisville, Kentucky 40205.

During my conduct of the investigation concerning Paul Rhodes and Nicholas Iacona, myself and other Special Agents of the Federal Bureau of Investigation have conducted spot checks in the vicinity of 2072 South Preston Street, Louisville, Kentucky, and have observed the aforementioned automobiles on the following dates and times indicated:

Date	Time	Vehicle	Agents
July 26, 1974	1:30 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Eugene N. Thomeczek, and John R. Morello
July 29, 1974	1:19 p.m. and 3:41 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Larry C. Bond and Eugene N. Thomeczek
August 7, 1974	4:15 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents John Michael Koziol and John R. Morello

Date	Time	Vehicle	Agents
August 14, 1974	11:55 a.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Eugene N. Thomeczek and John R. Morello
August 15, 1974	12:37 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agent John R. Morello
August 21, 1974	1:23 p.m. and 2:04 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Eugene N. Thomeczek and John R. Morello
August 23, 1974	12:05 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Bartley J. Gori, John R. Morello and Eugene N. Thomeczek
August 28, 1974	1:44 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agents Eugene N. Thomeczek, Larry C. Bond and John R. Morello
August 29, 1974	2:58 p.m. and 4:12 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 3, 1974	3:07 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 4, 1974	3:29 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917 and 1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello

Date	Time	Vehicle	Agents
September 11, 1974	2:35 p.m. and 2:50 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917 and 1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 18, 1974	12:57 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 19, 1974	2:27 p.m. and 4:05 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 22, 1974	1:05 p.m. and 2:15 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 25, 1974	1:07 p.m. and 2:20 p.m.	1968 Volkswagen Bearing 1974 Kentucky License L87-917	Special Agent John R. Morello
September 25, 1974	1:25 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 27, 1974	12:33 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello
September 30, 1974	2:25 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello

Date	Time	Vehicle	Agents
October 1, 1974	1:15 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agents Larry C. Bond and John R. Morello
October 2, 1974	12:30 p.m.	1971 Pontiac Bearing 1974 Kentucky License M54-461	Special Agent John R. Morello

On August 13, 1974, at 11:45 a.m., Special Agent Eugene N. Thomaczek and myself observed Nicholas Iacona enter the premises at 2072 South Preston Street, Louisville, Kentucky.

On August 26, 1974, at 2:14 p.m., Special Agent Eugene N. Thomaczek and myself observed Nicholas Iacona enter the premises at 2072 South Preston Street, Louisville, Kentucky.

On September 11, 1974, at 2:50 p.m., I observed Nicholas Iacona enter the front door at 2072 South Preston Street, Louisville, Kentucky.

On September 25, 1974, at 1:07 p.m., I observed Nicholas Iacona seated in a 1968 beige Volkswagen, bearing 1974 Kentucky license L87-917, which was parked in the vicinity of 2072 South Preston Street, Louisville, Kentucky.

On September 27, 1974, at 12:35 p.m., I observed Paul Rhodes enter the premises at 2072 South Preston Street, Louisville, Kentucky.

On October 15, 1974, I determined that Paul Rhodes resides at Apartment 103 Breckinridge Square, Louisville, Kentucky, and on November 24, 1974, CS-1 advised me that Arthur Toth formerly resided at 103 Breckinridge Square, Louisville, Kentucky, with Paul Rhodes. CS-1 further advised me that sometime in September or early October, 1974, CS-1 was at the Breckinridge Square Apartments during which time Toth told CS-1 he had recently returned from Pennsylvania and was going to leave the

Louisville, Kentucky, area permanently and move to Texas.

Special Agent Edwin H. Eilers, Supra, Special Agent Eugene N. Thomeczek, Supra, and myself have observed a 1971 Pontiac Catalina, silver gray in color, with a white top, bearing 1974 Kentucky license M54-461, parked in the vicinity of 103 Breckinridge Square on the following dates at the times indicated:

Date	Time	Agents
October 15, 1974	3:58 p.m.	Special Agents Eugene N. Thomeczek and John R. Morello
November 14, 1974	3:14 p.m. and 5:16 p.m.	Special Agent Edwin H. Eilers
November 15, 1974	4:22 p.m.	Special Agent Edwin H. Eilers

12. On May 8, 1974, Special Agent Edwin H. Eilers, Supra, advised me that on May 3, 1974, CS-2 advised him that CS-2 learned from a Louisville bookmaker that Foch Karem, Jr., told him that he, Foch Karem, Jr., has been exchanging lay-off wagers with Kenny Votteler at telephone number 502-228-3131.

13. On June 28, 1974, CS-1 advised me that for the past six (6) months CS-1 has been placing horse race wagers with Kenny Votteler and Kenny (last name unknown) at telephone numbers 502-228-3120 and 502-228-3131 on a substantially daily basis.

On July 18, 1974, CS-1 advised me that CS-1 continued to place wagers with Kenny (Last name unknown) at telephone numbers 502-228-3120 and 502-228-3131 and CS-1 had placed wagers on horse races over these numbers on July 15, 1974, July 16, 1974, and July 18, 1974.

On July 30, 1974, CS-1 advised me that on an almost daily basis from July 18, 1974, until July 28, 1974, CS-1 has

placed wagers with Kenny and another unknown male at telephone numbers 502-228-3120 and 502-228-3131.

On August 19, 1974, CS-1 advised me that on August 17, 1974, CS-1 placed wagers with an unknown male over telephone number 502-228-3131 and after placing the wagers with the unknown male, CS-1 spoke with an individual whose voice CS-1 recognized as that of Kenny Votteler.

14. On September 13, 1974, Special Agent Edwin H. Eilers, Supra, advised me that on September 6, 1974, that CS-2 learned from a Louisville bookmaker, who was told by Foch Karem, Jr., that he, Foch Karem, Jr., and Kenny Votteler were operating a handbook accepting wagers on sports contests and horse races and were exchanging lay-off wagers with Paul Rhodes.

On October 18, 1974, Special Agent Eilers advised me that on September 23, 1974, CS-2 advised him that CS-2 was told by a Louisville bookmaker, who was told by Kenny Votteler that he, Kenny Votteler, had been joined in his handbook in Oldham County, Kentucky, by Foch Karem, Jr. The handbook operator further advised CS-2 that he was told by Votteler that he, Votteler, was using telephone number 502-228-3131 to operate the handbook and continued to exchange lay-off wagers with Paul Rhodes.

15. On October 16, 1974, CS-1 advised me that CS-1 contacted Kenny Votteler at telephone number 502-228-3131 and placed wagers on several horse races with Votteler.

On October 18, 1974, CS-1 advised me that during the afternoon of October 17, 1974, CS-1 contacted Kenny Votteler at telephone number 502-228-3131 and placed a wager on a horse race.

On October 23, 1974, CS-1 advised me that on October 22, 1974, CS-1 had contacted an individual who referred to himself as Foch, over telephone number 502-228-3120 and placed a wager on a horse race.

On November 15, 1974, CS-1 advised Special Agent Eugene N. Thomeczek, Supra, and myself that on November 11, 1974, CS-1 contacted Kenny Votteler over telephone number 502-228-3131 and thereafter placed several wagers on horse races.

CS-1 also advised he had contacted Foch on November 14, 1974, at telephone number 502-228-3120, and placed wagers on three (3) horse races.

On November 18, 1974, CS-1 advised me that CS-1 had contacted Jimmy (last name unknown) at telephone number 502-228-3131 on November 15, 1974, and had placed wagers with Jimmy (last name unknown). On November 18, 1974, CS-1 advised that CS-1 contacted Kenny Votteler at telephone number 502-228-3131 and had placed wagers on at least two (2) horse races to be run November 18, 1974.

On December 4, 1974, CS-1 advised me that on December 2, 1974, CS-1 contacted Jimmy (last name unknown), telephone number 502-228-3120, and placed a wager on a horse race. During the time CS-1 was on the telephone, CS-1 overheard Foch Karem, Jr., talking on one of the other telephones at the same location as 502-228-3120. After placing the wager with Jimmy (last name unknown), CS-1 asked where Kenny Votteler was and Jimmy replied that Votteler was not there at the present time. On the same date, CS-1 advised me that Kenny Votteler's handbook grosses approximately ten thousand dollars to fifteen thousand dollars per day in wagers as Votteler has been a bookmaker for several years and has a large number of customers. On December 5, 1974, CS-1 advised me that CS-1 telephonically contacted Foch Karem, Jr., at telephone 502-228-3131 and placed a wager on a horse race.

16. On November 19, 1974, Special Agent Edwin H. Eilers, Supra, advised me that on November 18, 1974, CS-2 advised him that an individual that CS-2 knows as a Louisville, Kentucky, bookmaker told CS-2 that he was told by Foch Karem, Jr., that he, Foch Karem, Jr., and Kenny Votteler continue to operate a handbook in Oldham County, Kentucky, utilizing telephone number 502-228-3131. CS-2

was further informed by the bookmaker that Karem, Votteler and Rhodes exchange lay-off action on sports contests and horse races.

17. On August 5, 1974, Special Agent Edwin H. Eilers, Supra, and myself observed a white Oldsmobile with black top, bearing 1974 Kentucky license L81-922, parked in the driveway at Lot Seven (7), Riverside Drive, Oldham Acres, Prospect, Kentucky. Also parked in the driveway at this same address was a late model green Oldsmobile.

On August 27, 1974, Special Agent Peter G. Knese, Louisville Office, Federal Bureau of Investigation, and myself observed a green Oldsmobile, bearing 1974 Kentucky license L31-057 parked in the driveway at Lot Seven (7), Riverside Drive, Oldham Acres, Prospect, Kentucky. The Oldsmobile observed appeared to be identical to the Oldsmobile observed by myself and Special Agent Eilers at the same location on August 5, 1974.

On August 5, 1974, I caused a check of the Law Information Network of Kentucky (LINK) which revealed 1974 Kentucky license L81-922 is listed to Kenneth R. Votteler, 6725 Carolyn Road, Louisville, Kentucky, 40214, for use on a 1967 Oldsmobile, four door, VIN 384397M199284.

On August 27, 1974, I caused a check of the Law Information Network of Kentucky (LINK) which revealed that 1974 Kentucky license L31-057 is listed to Carol Crady, 1709 San Jose, Louisville, Kentucky 40216, for use on a 1970 Oldsmobile, VIN 354390N291443.

On November 20, 1974, Special Agent Eugene N. Thomeczek advised me that at 11:21 a.m. on that date, he had observed a brown 1971 Ford, bearing 1974 Kentucky license L89-347 occupied by two white males, on Rose Island Road in Oldham County, Kentucky. A surveillance was instituted on that vehicle at that time and at 11:25 a.m., that vehicle was observed to park at Lot Seven (7), Oldham Acres, Oldham County, Kentucky. At 11:27 a.m., it was

observed that both the occupants of the car were no longer in the car.

On November 20, 1974, I caused a check of Law Information Network of Kentucky (LINK) which revealed that 1974 Kentucky license L89-347 is listed to Foch L. Karem, Sr., 667 Armory Place, Louisville, Kentucky, 40202, for use on a 1971 Ford, four door, VIN 1U68S183559.

On December 6, 1974, Bob Rauchfuss, Jefferson County Motor Vehicle License Bureau, advised me that 1974 Kentucky license K86-743, is registered to Foch L. Karem, Jr., 1604 South Third Street, Louisville, Kentucky, for use on a 1973 Cadillac, Vehicle Identification Number 6L47S3Q-443199. An inquiry through the National Crime Information Center revealed that this vehicle was reported to the Louisville, Kentucky, Police Department as being stolen on May 5, 1974, by Foch Karem, Jr., 667 Armory Place, Louisville, Kentucky. Records of the Louisville Police Department Auto Theft Squad revealed that the 1973 Cadillac bearing 1974 Kentucky license K86-743 had not been recovered.

Spot checks in the early morning and late evening hours in the vicinity of Lot 7, Oldham Acres, Prospect, Kentucky, revealed no vehicles or activity at that address. Telephone calls to Louisville, Kentucky, telephone numbers 502-228-3120, 502-228-3131 and 502-228-8043 during early morning and late evening hours have not been answered.

18. (a) Pursuant to a subpoena duces tecum issued by the United States Clerk of Court, Western District of Kentucky, Louisville, Kentucky, A. J. Besendorf, State Security Manager, South Central Bell Telephone Company, 534 Armory Place, Louisville, Kentucky, on August 23, 1974, made available telephone numbers 502-456-4731, in the name of Marie Toth, 103 Breckinridge Square, Louisville, Kentucky, 40220, and telephone number 502-459-3372 in the name of Arthur Toth, 103 Breckinridge Square Louisville, Kentucky, 40220.

(b) Pursuant to the same subpoena duces tecum, Mr. Besendorf made available telephone toll records concerning Louisville, Kentucky, telephone numbers 502-636-3706, 502-363-3707, 502-635-7461 and 502-635-7462 with the period beginning June 1, 1974, and ending July 31, 1974. A review of the records revealed that telephone numbers 502-636-3706 and 502-636-3707 was a Rotary Telephone System which had been changed to telephone numbers 502-635-7461 and 502-635-7462 which was also a Rotary Telephone System. These telephones were listed to Telaad, 2072 South Preston Street, Louisville, Kentucky 40217. A review of toll charges reported against these telephones for the period beginning June 1, 1974, and ending July 31, 1974, revealed a total of twenty-five (25) calls to Covington, Kentucky, telephone numbers 606-331-6135 and 606-331-6136.

(c) Pursuant to a subpoena duces tecum issued by the United States Clerk of Court, Eastern District of Kentucky, Lexington, Kentucky, A. J. Besendorf, State Security Manager, South Central Bell Telephone Company, 534 Armory Place, Louisville, Kentucky, on October 8, 1974, made available telephone toll records concerning Louisville, Kentucky, telephone numbers 502-635-7461 and 502-635-7462 for the period beginning August 1, 1974, through September 30, 1974, in the name of Telaad, 2072 South Preston Street, Louisville, Kentucky 40217. Responsible party for the telephone service was listed as Paul Rhodes. From the period beginning August 12, 1974, through September 10, 1974, a total of twenty-four (24) long distance calls were made to Covington, Kentucky, telephone numbers 606-331-6135 and 606-331-6136 and charged to Louisville, Kentucky, telephone numbers 502-635-7461 and 502-635-7462.

(d) See Attached Affidavit of Special Agent Harold S. Harrison, Jr., Paragraph 25 (g).

(e) Pursuant to a subpoena duces tecum issued by the United States Clerk of Court, Western District of Kentucky, Louisville, Kentucky, A. J. Besendorf, State Security Manager, South Central Bell Telephone Company, 534 Armory Place, Louisville, Kentucky, on August 23, 1974, made available telephone records relating to Prospect, Kentucky, telephone number 502-228-8043 in the name of J. W. Jones, Oldham Acres, Lot Seven (7), Prospect, Kentucky. This telephone service is billed to J. W. Jones, Oldham Acres, General Delivery, Prospect, Kentucky 40059.

Pursuant to the same subpoena duces tecum, telephone records concerning Prospect, Kentucky, telephone number 502-228-3131 were made available. Telephone number 502-228-3131 is listed to Honey Foley, Lot Seven (7), Oldham Acres, Prospect, Kentucky 40059. Charges for this number are billed to R. L. Foley, 8005 Afterglow Drive, Lot 566, Louisville, Kentucky 40214.

Pursuant to the same subpoena duces tecum, A. J. Besendorf on August 23, 1974, made available telephone records concerning telephone number 502-228-3120 which is listed to R. L. Foley, Oldham Acres, Lot Seven (7), Prospect, Kentucky 40059. Charges for this number are billed to R. L. Foley, 8005 Afterglow Drive, Louisville, Kentucky 40214.

On March 26, 1973, Paul Robert Rhodes was located at 1607 Lucia Avenue, Louisville, Kentucky, by Special Agent Eugene N. Thomeczek and me at which time he admitted having two (2) telephones at that address under fictitious names, those being G. Phillips and Paul Robert. One Arthur Edward Toath was also located at 1607 Lucia Avenue, on that date at which time Toath was residing with Rhodes.

Subsequent investigation indicates Toath no longer resides in the Louisville, Kentucky, area.

Special Agent Eugene N. Thomeczek advised me on November 25, 1974, that during his investigation concerning Kenneth Raymond Votteler from February 10, 1972, through December 12, 1973, he determined that Honey Lee Foley, nee Durham, is the stepdaughter of Kenneth Raymond Votteler and that Foley resided with her husband,

Richard L. Foley at 8005 Afterglow Drive, Louisville, Kentucky. Investigation concerning J. W. Jones, including criminal and driver's license checks has failed to identify any J. W. Jones residing at Lot Seven (7), Oldham Acres, Prospect, Kentucky 40059.

(f) See attached Affidavit of Special Agent Harold S. Harrison, Jr., Paragraphs 25(a), 25(b), and 25(d).

19. Attached herewith and incorporated into this affidavit is an affidavit of Special Agent Harold S. Harrison, Jr.

20. On October 31, 1974, U. S. District Judge Mac Swinford, Eastern District of Kentucky, at Covington, Kentucky, issued an order authorizing the interception of communications to and from Erlanger, Kentucky, telephone numbers 606-331-6135 and 606-331-6136, and an order authorizing the use of mechanical recording devices to identify the telephone numbers contacted from the above telephones. The interception of these communications was effected by Special Agents of the Federal Bureau of Investigation on October 31, 1974, continuing through November 11, 1974.

On November 18, 1974, Special Agent Eugene N. Thomeczek, Federal Bureau of Investigation, Louisville, Kentucky, advised me that he has listened to a portion of each recorded conversation obtained during the above court authorized wire interception, and that this interception indicated that Joseph Anthony Mark Albers, Fred Joseph Wehby, and Charles Burkhardt accepted and placed illegal wagers on football games and horse races over telephone numbers 606-331-6135 and 606-331-6136 on each day during the interception. Albers and Wehby were regularly in telephonic contact with Glen Brockell, Clarence "Peanuts" Liefling, Jr., and others, concerning lay-off wagers, line information, and race results during this period.

The following conversations were monitored between Foch Louis Karem, Jr., Kenneth Raymond Votteler, an unknown male known only as Jimmy (Last Name Unknown), and the Albers telephone handbook:

On November 1, 1974, Foch Louis Karem, Jr., telephonically contacted Albers at telephone number 606-331-6136, attempting to lay-off a wager on a horse running at Thistledown Race Track, which Albers had to refuse to accept because "everybody quit dealing 'Thistle' up here after last year."

At 3:30 p.m. on November 1, 1974, Albers telephonically contacted Kenneth Raymond Vottler at telephone number 1-502-228-3120 and layed-off a total of $400.00 in horse race wagers. They discussed race results during this call.

At 5:19 p.m. on that same date, Albers telephonically contacted Foch Louis Karem, Jr., at telephone number 1-502-228-3131, and exchanged horse race results with him.

At 1:51 p.m. on November 2, 1974, Albers telephonically contacted Kenneth Raymond Votteler at telephone number 1-502-228-3131 to check the starting time of a football game. Albers told Votteler that the game was already started, and he did not want "Fausty" (Foch Louis Karem, Jr.) to be "past posted." Votteler said, "Well he appreciates it and so do I."

At 11:47 a.m. on November 3, 1974, Foch Louis Karem, Jr., telephonically contacted Charles Burkhardt at telephone number 606-331-6135 and obtained the results of races run at the Chicago, Detroit, and Jersey race tracks.

At 3:40 p.m. on November 4, 1974, Albers telephonically contacted an individual at telephone number 1-502-228-3120. Due to technical difficulties, no definite conclusion could be reached as to the identity of the person called by Albers. During the call, Albers placed a $440.00 football lay-off wager and agreed that he

owed "them" nineteen and a quarter ($1,925.00) from wagers previously placed. When it was discovered that Albers' figure was "fifteen little dollars off", he changed the amount owed to "nineteen forty ($1,940.00)." Albers told the person called that he would send Bill over to pay this amount unless "he" wanted to come "up there."

At 1:26 p.m. on November 5, 1974, Foch Louis Karem, Jr., telephonically contacted Albers at telephone number 606-331-6135, and Albers told Karem that he had a "package" (payoff) for him. They agreed during this call and a call at 5:32 p.m. to meet at the "Beverly" (Beverly Hills Night Club) to settle up at 9:00 p.m. that night.

On the evening of November 5, 1974, Special Agents John W. Gill, Larry C. Bond, and Eugene N. Thomeczek observed Albers at the bar at the Beverly Hills Night Club, Southgate, Kentucky, at precisely 9:00 p.m. Foch Louis Karem, Jr., entered the bar and walked directly to the bar where he engaged Albers in conversation. A few minutes later, these two men walked from the bar area to the dining room where they both sat down at the same table.

At 12:10 p.m. on November 7, 1974, Albers telephonically contacted telephone number 1-502-228-3131 and spoke with an individual. Due to technical difficulties, no definite conclusion could be reached as to the identity of the person called by Albers. During the call, Albers layed-off $260.00 n horses running at Louisville on that date.

At 2:07 p.m. on the same date, Albers telephonically contacted telephone number 1-502-228-3131 and spoke with Jimmy (Last Name Unknown) to obtain the results of horse races already run on that date.

At 3:04 p.m. on November 7, 1974, Albers telephonically contacted telephone number 1-502-228-3131 and spoke with Jimmy (Last Name Unknown), from whom he obtained race results. When Albers indicated he wanted to lay-off more wagers on the horse named Swish Swish, Jimmy said "Here, wait a minute, I'll let you talk to Foch." Albers talked to Karem. Karem confirmed that they had already layed money off on Swish Swish, and that "I already got eleven dollars ($1,100.00), I don't think I can go (lay-off) anywhere." Albers then layed-off a hundred dollars ($100) on Swish Swish and Lady Rochelle, both running in the seventh (7th) race at Churchill Downs that date. Albers explained that when he tried to lay-off money earlier on Swish Swish, Karem's telephones had been busy, so he had to lay the money off to another party. Karem asked, "How many numbers have you got there?" Albers replied, "I got 3131 and 3120." Karem furnished the other telephone number as "8043" with the same prefix. Albers confirmed this number by stating 228-8043.

At 4:23 p.m. on that same date, Albers telephonically contacted Jimmy (Last Name Unknown) at telephone number 1-502-228-3131 to obtain the results of horse races.

At 12:56 p.m. on November 9, 1974, Albers placed outgoing calls to telephone numbers 1-502-228-3120 and 1-502-228-3131 and received busy signals. He then telephonically contacted Jimmy (Last Name Unknown) at telephone number 1-502-228-8043. After establishing that Albers owed $260.00, Albers layed-off $300.00 to Jimmy on horse races.

At 2:13 PM, Albers again contacted Jimmy at telephone number 1-502-228-3131, obtained race results and layed-off $200.

At 11:35 AM, Karem telephonically contacted Albers at telephone number 606-331-6135, and after obtaining race results from Charles Burkhardt, Albers furnished Karem his football line for Sunday's games. Albers asked if Karem was going to be in his "office" that day, and Karem stated, "Yeah, I'll be here until about four." Albers stated, "I owe you seven sixty," and Karem replied, "That's right on the button."

At 2:27 PM on November 6, 1974, Bill Deering called Fred Joseph Wehby and inquired of Foch's telephone numbers and Wehby furnished them as 1-502-228-3131 and 1-502-228-3120.

On December 11, 1974, Special Agent Eugene N. Thomeczek advised me that on that date he telephonically contacted an individual who identified himself as "Jim" over Louisville, Kentucky telephone number 228-8043. Jim's voice is identical to that of the individual identified as Jimmy (Last Name Unknown) monitored during the court authorized interception described in paragraph 20 above.

On December 6, 1974, Special Agent John M. Barry, Federal Bureau of Investigation, Covington, Kentucky, advised me that on November 22, 1974, at 11:40 AM and on November 28, 1974, at 1:34 PM, he had observed the automobiles registered to and normally driven by Albers and Wehby near Building C, 3908 Lori Drive, Erlanger, Kentucky.

On November 23, 1974, at 12:40 PM, Special Agent Barry observed Albers' vehicle and a Buick LeSabre, bearing 1974 Kentucky license A9-762 registered to Charles Burkhardt, Highland Heights, Kentucky, at that same address.

The following conversations were intercepted pursuant to this court authorized wire interception to and from Paul Robert Rhodes:

At 2:39 PM on November 1, 1974, Rhodes telephonically contacted Albers at telephone number 606-331-6135. Albers layed-off a total of ninety dollars ($90.00) in horse race wagers with Rhodes, accepted eighty dollars ($80.00) in horse race wagers from Rhodes and then accepted a two hundred forty dollar ($240.00) college football bet from Rhodes.

At 3:25 PM on November 2, 1974, Albers telephonically contacted Rhodes at telephone number 1-502-456-4731 and obtained the results of one of the races bet by Rhodes the previous date. They agreed Albers owed Rhodes five hundred forty-one dollars ($541.00).

At 3:09 PM on November 4, 1974, Rhodes telephonically contacted Albers at telephone number 606-331-6136 to change the figure agreed upon, November 2, 1974, to six hundred seventy-six dollars ($676.00) since Rhodes had made a mistake in computing the pay-off. Albers layed-off two hundred dollars ($200) in horse race wagers during this call.

At 1:18 PM on November 5, 1974, Rhodes contacted Albers at telephone number 606-331-6135 and settled their account at exactly five hundred dollars ($500). Rhodes told Albers he was going to the track on that date and Albers touted him on two horses running at Churchill Downs on that date. Because both horses were running against lost odds, Albers commented that one had to book the horse rather than bet it.

At 1:19 PM on November 6, 1974, Rhodes telephonically contacted Albers at telephone number 606-331-6135 during which call Albers layed-off a one hundred dollar ($100) horse race wager.

At 12:36 PM Rhodes telephonically contacted Albers at telephone number 606-331-6135. After they agreed that Albers owed Rhodes six hundred dollars ($600.00), Albers layed-off one hundred eighty dollars ($180.00) in horse race wagers with Rhodes.

At 2:33 PM on November 7, 1974, Rhodes telephonically contacted Albers at telephone number 606-331-6136 and layed-off a total of one hundred forty dollars ($140.00) in horse race wagers. He placed a twenty-dollars ($20) win and twenty dollars ($20.00) place wager on Lady Rochelle in the seventh race at Churchill Downs and parlayed that horse with a horse in the sixth race at Churchill Downes, twenty dollars ($20.00) across ($60.00). Rhodes told Albers to "spread it around out there. I got a pretty good order (lay-off bet) across."

Sometime later that date at 4:31 PM, Albers telephonically contacted telephone number 1-502-459-3372 and due to technical difficulty, no positive identification could be made of the person called. During this call, Albers placed one hundred forty dollars ($140.00) in lay-off wagers then furnished his football line during which time he referred to the person called as "Paul." Albers then accepted nine hundred sixty dollars ($960.00) in football wagers.

The voices identified during the above interception as Albers, Wehby, Leifling, Karem, Vottler, Brockell, Burkhards, Rhodes and Jimmy (Last Name Unknown), were identified by Special Agents of the Federal Bureau of Investigation, Louisville, Kentucky, based on prior interviews of those individuals; through the context of the monitored telephone calls or through other investigative techniques including surveillances.

On November 27, 1974, United States Magistrate Robert C. Cetrulo, Covington, Kentucky, issued an order for Special Agents of the Federal Bureau of Investigation to install mechanical recording devices on telephone numbers 606-331-6135 and 606-331-6136, Erlanger, Kentucky, to identify the telephone numbers contacted from those telephones. This mechanical recording began November 29, 1974.

On December 11, 1974, Special Agent Harold S. Harrison, Jr., Federal Bureau of Investigation, Covington, Kentucky,

advised me that he had reviewed the mechanically recorded telephone numbers contacted from the Erlanger, Kentucky, telephone numbers with the following pertinent information:

Date	Number Contacted	Time	Duration of call
December 3, 1974	1-502-456-4731	1:53 PM	4 minutes
December 5, 1974	1-502-228-3120	2:19 PM	Less than one minute
December 5, 1974	1-502-228-3131	2:19 PM	4 minutes
December 5, 1974	1-502-456-4731	3:45 PM	3 minutes
December 6, 1974	1-502-456-4731	4:58 PM	4 minutes
December 6, 1974	1-502-228-3131	6:04 PM	1 minute
December 9, 1974	1-502-228-3120	12:22 PM	2 minutes
December 9, 1974	1-502-456-4731	12:25 PM	2 minutes
December 9, 1974	1-502-228-3120	3:26 PM	Less than one minute
December 9, 1974	1-502-228-3131	3:27 PM	4 minutes
December 10, 1974	1-502-228-3120	2:15 PM	3 minutes
December 10, 1974	1-502-456-4731	2:24 PM	Less than one minute
December 10, 1974	1-502-459-3372	2:24 PM	2 minutes
December 10, 1974	1-502-228-3131	4:51 PM	1 minute

21. Interception of communications requested herein are necessary in order to identify the various co-conspirators and to learn the full scale illegal gambling business. Normal investigative techniques such as surveillances, reviews of telephone records and interviews have been tried without success and reasonably appear to be unlikely to succeed if further tried. Surveillances and interviews of potential witnesses have failed to provide evidence necessary to sustain convictions of Paul Robert Rhodes, Kenneth Raymond Votteler and others for violations of Title 18,

Sections 371 and 1955, United States Code. The execution of search warrants on the persons and premises listed in the foregoing paragraphs would be unlikely to provide the evidence necessary to sustain successful prosecution under these statutes. My previous investigations have revealed that bookmakers normally maintain sketchy, if any, records and frequently code the information contained in their records and if they have the opportunity, they will destroy the records. Even if seized, the records would be unlikely to provide the specific evidence necessary to show the extent of the illegal gambling business and the full degree of participation in the business by Paul Robert Rhodes, Kenneth Raymond Votteler and others. Witnesses interviewed concerning the illegal gambling activities being conducted by Paul Robert Rhodes, Kenneth Raymond Votteler and others have failed to provide specific evidence of the violation because the witnesses are hesitant to discuss their knowledge of the gambling operation for fear of reprisal against them by Rhodes, Votteler and others. Informants CS-1, CS-2 and CS-3 have refused to testify for fear of physical and financial reprisals against them by Rhodes, Votteler and others.

For the reasons set forth above, the only reasonable method of developing the necessary evidence of violations committed by the above named individuals and others, whose identities are unknown, is to intercept wire communications of Paul Robert Rhodes, Kenneth Raymond Votteler and others to and from the telephones described above.

The activity to be electronically covered is believed to be a continuous criminal conspiracy and I submit on the basis of the facts and circumstances detailed in Paragraphs six (6) through twenty (20) that there is probable cause to believe that the evidence sought will be obtained on a continuing basis succeeding the first interception of the particular communications which are the object of this request for interception.

Wherefore, I submit that an order from this court permitting the interception of wire communications that such interception of wire communications shall not automatically terminate upon the first interception that reveals the names in which Joseph Anthony Mark Albers, Fred Joseph Wehby, Charles Burkhardt, Paul Robert Rhodes, Carl (Last Name Unknown), Foch Louis Karem, Jr., Kenneth Raymond Votteler, Jimmy (Last Name Unknown) and others as yet unknown, participate in the use of telephone facilities for the transmission of bets and wagering information, but shall continue until these interceptions reveal the identities of the confederates of the above listed individuals and place or places of operation and the nature of the conspiracy involved therein or for a period of fifteen (15) days from the date of the order, which ever is earlier.

(s) John R. Morello
Special Agent
Federal Bureau of Investigation
United States Department of Justice

Subscribed and sworn to before me this 13th day of December, 1974.

(s) Charles M. Allen
Judge, United States District Court
Western District of Kentucky